



Office de la propriété
intellectuelle
du Canada

Un organisme
d'Industrie Canada
www.opic.gc.ca



Canadian
Intellectual Property
Office

An Agency of
Industry Canada
www.cipo.gc.ca

October 20, 2010

GOWLING LAFLEUR HENDERSON LLP

1 Place Ville Marie
37th Floor
MONTREAL Quebec
H3B 3P4

Application No. : **2,451,477**
Owner : SCIENTIFIC ATLANTA, INC.
Title : **BANDWIDTH ALLOCATION AND PRICING SYSTEM FOR
DOWNLOADABLE MEDIA CONTENT**
Classification : G06Q 30/00 (2006.01)
Your File No. : **L80001690CA**
Examiner : Charles Mougeot

YOU ARE HEREBY NOTIFIED OF A REQUISITION BY THE EXAMINER IN ACCORDANCE WITH SUBSECTION 30(2) OF THE *PATENT RULES*. IN ORDER TO AVOID ABANDONMENT UNDER PARAGRAPH 73(1)(a) OF THE *PATENT ACT*, A WRITTEN REPLY MUST BE RECEIVED WITHIN **6 MONTHS** AFTER THE ABOVE DATE.

Applicant's letter of March 18, 2010 has been received and the application has been examined having regard to applicant's arguments. However, the examiner considers that the application still does not comply with the *Patent Act* or *Rules* in respect of the following defects:

The number of claims in this application is 62.

The search of the prior art has revealed the following:

References:

United States Patents

D1: 5 935 206	Aug. 10, 1999	Dixon et al
D2: 5 414 455	May 9, 1995	Hooper et al

The examiner has identified the following defects in the application:

Non-Statutory Subject Matter

The following subject matter objection has been made in accordance with chapters 12 and 13 of MOPOP.

Subject matter

Subject-matter objections may be made to either the form or the substance of claimed matter.

Subject matter – form

Claims 1 to 62, on their face, are directed to a system for purchasing recordable media. Therefore, claims 1 to 62, in form, fit into the category of machine in section 2 of the *Patent Act*.

Subject matter – determining the substance

To identify the substance, or essence, of claimed matter, it first must be determined what, according to the application, has been discovered. If patentable subject matter has not been discovered and disclosed, or does not form the substance of the claimed matter, the mere form of the claims cannot make it into a patentable invention.

The system claims on file pertains to a recordable media content purchasing system configured to download recordable media content at one of a plurality of various download times for purchase of the recordable media. The system implements a method comprised of receiving a user request for purchases of recordable media content, and downloading the requested recordable media content at one of a plurality of various download times for purchase of the recordable media content.

To determine the discovery behind, and thus the substance of, claimed matter, it is first necessary to look at the state of the art.

Computer system which facilitate allocating access to digital content are well known in the art. For example, D1 and D2 discloses such a system. In particular, D1 discloses a means for allocating access to an existing copy or existing copies of a digital video movie to clients to satisfy requests to view said movie, and means, responsive to substantial allocation of access to said existing copy or copies of said movie or a new request to view said movie, for determining whether to make another copy of said movie based in part on the degree to which current viewers have completed their viewing of said movie and a time required to make said other copy.

D2 also discloses a method for distributing videos, wherein the videos are stored on a mass storage device. each video includes a plurality of frames of digitized video data for playing back on a viewing device. The system includes memory buffer for storing a segment of a selected one of the videos. the segment includes a predetermined number of frames representing a predetermined time interval of the selected video.

Differences if any, between the claims on file and the prior art lie in the data processing, algorithm used by the computer system to allocate access to digital content. The applicant has asserted that "...the system is a machine that downloads data based on an algorithm. This is very Technological in nature." The applicant also submits that the machine claimed is different from the machines of the prior art due to the fact that different software is loaded into memory, thus reconfiguring the memory at a microscopic level (see applicants latest response dated 2010-03-18 page 2, paragraph 2). This software is implementing an algorithm, a method of data processing. Therefore as far as it can be understood, in the applicants opinion the differentiating feature, considered the substance or contribution of the claims on file lie in the softwares' algorithm, data processing method. Said data processing method is implemented in a computer system.

Therefore, as far as it can be understood, the substance or contribution of the present application is clearly directed to a method of data processing/ algorithm, said method is executed by a computer system.

Subject matter – what is statutory subject matter

The substance of claimed matter must belong to one of the categories of invention in section 2: it must be physical and technological, and not be excluded subject matter.

Subject matter – physicality

To belong to the domain of potentially patentable subject matter, referred to as the industrial arts or the manual and productive arts, subject matter must be a physical object or a method that physically changes the character or condition of a material object, and do more than merely involve the carrying out of a plan or theory of action without the production of any physical results proceeding directly from the operation of the theory or plan itself. A computer system wherein the substance of the claims lie in a method of data processing/ algorithm cannot be characterized as such an object or method.

Subject matter – technology

Nor can a computer system wherein the substance of the claims lie in a method of data processing/ algorithm be considered technological. Such a conclusion is reinforced by the fact that the word "technological" is just another name for the manual and productive arts; as shown above, this computer system wherein the substance of the claims lie in a computer system wherein the substance of the claims lie in a method of data processing/ algorithm does not belong to that domain of subject matter.

Subject matter – excluded subject matter

Methods and system claims wherein the substance or contribution of the claims lies in calculating values, extracting useful information from other information, comparing and analysing data are unpatentable.

Subject matter – conclusion

Therefore, the discovery behind, or essence of, the matter in claims 1-62 falls outside the categories of invention in section 2 of the *Patent Act*, and is objected to as such.

Response to Applicants' Comments

The applicant has submitted statements that appear to address the form of the claims , but not the substance, as the applicant continuously references parts of the claims which recite generic computer hardware as support for their argument that the claims on file are patentable under Section 2 of the *Patent Act*.

In order to overcome the current subject matter objection, it is necessary to address the substance of the claims, and why the applicants believes the inventive feature, considered the substance or contribution of the claims, constitutes patentable subject matter. Simply disagreeing with office policy with regards to the form and substance analysis (see MOPOP chapters 12, 13 and 16) will lead to a Final Action.

In order to expedite prosecution, applicant is also requested to explicitly state what, in the their opinion is the substance or contribution of the independent claims on file

If the defects referred to in the requisition are not overcome, the application may be rejected in a FINAL ACTION.

In view of the foregoing defects, the applicant is requisitioned, under subsection 30(2) of the *Patent Rules*, to amend the application in order to comply with the *Patent Act* and the *Patent Rules* or to provide arguments as to why the application does comply.

Charles Mougeot
Patent Examiner
819-994-7424